

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6788 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MODH CHIMANLAL KALIDAS

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner

MR HL JANI for Respondent No. 1

None present for Respondents No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/12/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The land in dispute is an agricultural land admeasuring 9 acres and 5 gunthas bearing Survey No.13 situated in the sim of Village Khimarajia, which has been purchased by the petitioner and the respondent No.3 by a registered sale deed on 24th April, 1968 from the

respondent No.2. Necessary entry of this purchase has been made in revenue record on 17th October, 1969. The respondent No.3, as per the case of the petitioner, has relinquished his share in the land in favour of the petitioner. The entry made in favour of the petitioner was taken in suo motu proceedings by the Deputy Collector and ultimately he decided that there is no illegality whatsoever. The Collector issued a show cause notice dated 15th December, 1984 to revise the entry along with the order of the Deputy Collector dated 31st March, 1982. This notice has been replied by the petitioner. Under the order dated 15th January, 1985, the Collector, Banaskantha set aside both the entry as well as the order of the Deputy Collector, Palanpur dated 31st March, 1982 and the matter was remanded back to the Mamlatdar, Palanpur to hold an inquiry and to proceed further after taking evidence of all the parties on record. Against this order, the petitioner preferred the revision application before the State Government and the same was dismissed under the order dated 5th August, 1985. Hence, this special civil application.

3. The counsel for the respondent raised a preliminary objection that this special civil application is not maintainable as nothing has been decided by the Collector, Banaskantha on merits and the matter has only been remanded back to the Mamlatdar, Palanpur for deciding the matter afresh after taking evidence of all the parties. As it is a case of interlocutory order, this petition is not maintainable.

4. The learned counsel for the petitioner contended that the Collector has taken the action after long period of entry made in favour of the petitioner and only on this ground alone, the matter deserves to be accepted. It has next been contended that the Deputy Collector has taken up the matter in suo motu proceedings and when the entry was held to be valid, the Collector could not have taken the matter in suo motu revision. Replying to the preliminary objection raised by the counsel for the respondent, the counsel for the petitioner contended that it is a case where whole of the proceedings initiated against the petitioner were without jurisdiction and hence the order deserves to be set aside.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. The parties are not at variance that the land in dispute was belonging to an adivasi. The Deputy Collector, as per the petitioner's own case, has taken

the entry made in favour of the petitioner in respect of the land in dispute in suo motu proceedings. It is true that the Deputy Collector has decided the matter under its order dated 31st March, 1982 in favour of the petitioner, but the Collector has exercised the suo motu jurisdiction and issued a show-cause notice to the petitioner dated 15th December, 1984. The petitioner has not felt aggrieved of the action of the Deputy Collector, Palanpur and when the Deputy Collector decided the matter in his favour, I fail to see how the Collector, Banaskantha was lacking in jurisdiction in the matter to take the order of Deputy Collector and the entry made, in suo motu revision. The order of the Deputy Collector though has been passed on 31st March, 1982 and the show-cause notice was given on 15th December, 1984 but during this period it cannot be said that the petitioner has changed his position or otherwise this delay will cause any prejudice to him. The limitation to exercise suo motu powers in such matters has not been prescribed and such power has to be exercised within reasonable time but it depends on the facts of each case whether the power is exercised within reasonable time or not. This question of delay in exercising of powers has to be considered with reference to how the parties have changed their position. If the parties have changed their position then delay may be considered to be fatal but where the parties have not changed their position then only on this ground the exercise of suo motu powers of revision or review by the Collector, Banaskantha cannot be declared to be illegal or arbitrary. While dealing with such matters of lands belonging to adivasis, all care and caution has to be taken by the authorities to see that these persons belonging to the down trodden class are not being exploited. The petitioner and the respondent No.3 purchased this land from an adivasi and later in point of time, the respondent No.3 relinquished his right from the land. No reasons have come on record what for the petitioner and respondent No.3 purchased this land jointly, and why later in point of time, the respondent No.3 withdrew himself from this sale. This conduct of the petitioner creates suspicion in the mind of Court. Be that as it may, nothing more is required to be gone into in detail in this matter as the Collector has only remanded the matter to the Mamlatdar, Palanpur to decide the same after taking the evidence. The matter has not been decided on merits. I find sufficient merits in the contention of the counsel for the respondent that against this order of remand this Court should not interfere and more so when the State Government has declined to interfere in the revision against the said order.

7. The learned counsel for the petitioner has failed to show how the Collector was lacking in jurisdiction in the matter to initiate the suo motu proceedings. That lack of jurisdiction appears to have been built up a ground only on the ground of delay in taking the action but even if there is some delay in taking the action, the action of the authority cannot be termed or put in the category of "action without jurisdiction". The State Government has not interfered with the order of the Collector on the ground that Collector has remanded the matter to the Mamlatdar. When the revisional authority itself has not thought of this case to be a fit one to exercise revisional power only on the ground that the matter has been only remanded, I fail to see how far it is correct for this Court to interfere in the matter. In the matter where the authorities below have remanded the matter to the lower authority, this Court may not be justified in extending its jurisdiction under Article 227 of the Constitution. It is not the gainsay that this Court sitting under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardships or wrong decisions. The powers of this Court under Article 227 of the Constitution must be restricted to cases of grave dereliction of duties and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless this Court interferes. So even if in the case where this Court finds something wrong in the decision of the authorities, it may decline to interfere in the matter unless it finds that the authorities have committed grave dereliction of duty and flagrant abuse of fundamental principles of law or justice. Even in that category of cases, the power can only be exercised where grave injustice would be done unless this interferes with such a wrong order. In the present case, both the authorities below have not committed any mistake or illegality or it cannot be said to be a case of wrong decision. The District Collector, Banaskantha in the facts of this case has acted fairly and reasonably to remand the matter. It is not the case where any injustice would be done to the petitioner in case this Court declines to interfere in the matter. The petitioner will have the opportunity to produce the evidence and raise all objections before the authority concerned.

8. Taking into consideration the totality of the facts of this case, the order impugned in this special civil application does not call for interference of this Court sitting under Article 227 of the Constitution. However, this matter is pending for all these years

before this Court and as such I consider it to be appropriate to direct the Mamlatdar, Palanpur to decide the remanded matter as expeditiously as possible but not later than three months from the date of receipt of writ of this order. Rule is discharged subject to the aforesaid direction. Interim relief granted by this Court stands vacated.

zgs/-